

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR F. TRAPP	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
ET AL	:	NO. 97-1135

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, J.

JUNE 4, 1997

Petitioner, a state court prisoner, filed a pro se petition for writ of habeas corpus, under 28 U.S.C. § 2254, on April 30, 1997. He had been convicted in the Philadelphia Court of Common Pleas of involuntary deviate sexual intercourse and indecent assault and corruption of minors (Nos. 3185, 3188-3189, February Term, 1990) following a non-jury trial before the Honorable (now Justice) Russell M. Nigro. Petitioner's conviction resulted from an arrest without a warrant by Philadelphia police officers based on their belief that he was about to commit suicide; his post-arrest statement to the police officers was admitted in evidence. Judge Nigro denied petitioner's post-verdict motions and sentenced him to five to ten years imprisonment for involuntary deviate sexual intercourse and concurrent terms of two years probation for indecent assault and corruption of minors.

Petitioner filed a direct appeal from the judgment of sentence to the Pennsylvania Superior Court. After affirmance of his conviction by the Superior Court, two of his seven claims before the Superior Court were presented to the Pennsylvania Supreme Court by petition for allocatur:

1. Whether defendant's right to procedural due process was violated by the lack of specificity of the bills of information and whether the court abused its discretion in denying defendant's motion for a bill of particulars.

2. Whether defendant's motion to suppress should have been granted because defendant's statement was tainted by his illegal arrest because there were no exigent circumstances to justify defendant's warrantless arrest in his home.

The Pennsylvania Supreme Court denied allocatur on July 1, 1992. Petitioner, filing this habeas corpus petition on January 9, 1997, raises the same two issues presented to the Pennsylvania Supreme Court. The respondent admits those issues are exhausted for purposes of habeas corpus review. In the absence of any evidence of cause or prejudice, all other issues have not been exhausted and cannot be considered.

On May 1, 1997, the Magistrate Judge filed a Report and Recommendation that the petition for writ of habeas corpus be denied and dismissed without an evidentiary hearing. Petitioner filed timely objections. Many of the petitioner's objections relate to errors of state law, such as the elements of the state crimes charged and insufficiency of the evidence to support them; they do not constitute violations of the Federal Constitution and cannot be remedied by a writ of habeas corpus.

Petitioner concedes that under 28 U.S.C. § 2254, there is a presumption of correctness to factual findings of a state court, unless certain exceptions apply. He contends the presumption of correctness does not apply to conclusions of law or mixed questions of law or fact. However, this case was filed after the Anti-

Terrorism and Effective Death Penalty Act (AEDPA), so the provisions of AEDPA apply. United States v. Eyer, -- F.3d --, 1997, WL 249174 (3d Cir. 1997). The presumption of correctness now applies to mixed questions of law and fact and the cases cited by the petitioner have been overruled by this statutory enactment.

As to state court denial of Trapp's Fourth Amendment suppression motion, the Magistrate Judge is correct that, "violations of the Fourth Amendment do not provide grounds for federal habeas corpus relief from a state conviction if the petitioner has had a full and fair opportunity to litigate his complaints at the state level." Report and Recommendation, citing Cardwell v. Taylor, 461 U.S. 571 (1983); see also, Deputy v. Taylor, 19 F.3d 1485 (3d Cir. 1994); Stone v. Powell, 428 U.S. 465 (1976). Petitioner had that opportunity.

Petitioner's denial of due process claim would be an adequate basis for habeas relief if he established his Miranda rights were violated. Withrow v. Williams, 507 U.S. 680 (1993). However, petitioner has made no allegation of Miranda violations. Even if he were to allege Miranda violations, this was not raised on appeal to the State courts and would be unexhausted for habeas corpus review. The court concurs with the Report and Recommendation of the Magistrate Judge that petitioner's notice of the charges against him was adequate under federal law. There was no denial of due process.

Therefore, the court will overrule petitioner's objections and approve the Report and Recommendation of the Magistrate Judge. An

appropriate Order The following UNITED STATES DISTRICT COURT
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ORDER

AND NOW, this day of June, 1997, after consideration of the petition for writ of habeas corpus, defendant's Answer thereto, the Report and Recommendation of the Magistrate Judge and petitioner's objections thereto, it is hereby **ORDERED** that the Report and Recommendation is **APPROVED** and **ADOPTED**; the petition for writ of habeas corpus is **DENIED**. There is no probable cause to issue a Certificate of Appealability.

BY THE COURT:

J.